



Legislation Text

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Res. No. 1942

Resolution calling upon the Legislature and Governor of the State of New York to enact A7828A, amending the Banking, Real Property Actions and Proceedings, and General Business Laws in relation to eliminating rampant predatory lending practices.

By The Speaker (Council Member Vallone) and Council Members Harrison, Spigner, Malave-Dilan, Freed, Henry, Michels and Pinkett; also Council Members Eisland, Marshall, Nelson and Wooten

Whereas, Predatory lending practices have become widespread, frequently targeting the elderly, minority groups, and the poor; and

Whereas, These practices entail devious business schemes and gross misrepresentation and deception by lenders to homeowners, and usually involve, but are not limited to: targeting fixed and low income households, lending on home equity with complete disregard of the ability of the borrower to repay, charging exorbitantly high loan fees and closing costs imposing loan pre-payment penalties, operating home improvement contractor scams, offering repetitive refinancing, and utilizing false loan documentation; and

Whereas, Due to such lending practices, the victims of predatory lending often sustain losses that are life-altering, such as foreclosure on a home, the elimination of a home's equity, and a substantial loss of essential assets; and

Whereas, The New York State Legislative is currently considering A7828A (the "Bill"), which addresses the need to protect the targets of predatory lending practices with amendments to the Banking, Real Property Actions and Proceedings, and General Business Laws; and

Whereas, Pursuant to the Bill, generally no high-cost home loan may contain a provision that permits the lender, in its sole discretion, to accelerate the indebtedness, or contain (i) a scheduled payment that is more than twice as large as the average of earlier scheduled payments, (ii) payment schedules with regular periodic payments that cause the principal balance to increase, or (iii) a provision which increases the interest rate following default; and

Whereas, The Bill would also prohibit abusive practices, including excessive loan fees, costly and unnecessary insurance policies, large "balloon" payments, high interest rates, and frequent refinances; and

Whereas, The Bill further states that no high-cost home loan could include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds to the borrower; and

Whereas, Under the Bill, a lender would not be able to charge the borrower any fees to modify, renew, extend or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan, or impose a penalty upon the borrower for paying the balance to the lender or forbearance, in whole or in part, at any time, or charge a borrower points and fees in connection with a high-cost home loan if the proceeds of such loan are used to refinance an existing high-cost home loan held by the lender or an affiliate of the lender; and

Whereas, The Bill would also prohibit a high-cost home loan from containing a clause binding the borrower to mandatory arbitration that would limit the borrower's right to seek relief through the judicial process for any claims against the lender, broker, or other party involved in the loan transaction; and

Whereas, The Bill would also prevent high-cost home loans from financing, directly or indirectly, any credit life, credit disability, credit unemployment, or credit from property insurance, or any other life or health insurance premiums, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly basis would not be considered financed; and

Whereas, Under the Bill, no lender or mortgage broker making or arranging a high-cost home loan could engage in the unfair act or practice of "Loan Flipping", or arrange a high-cost home loan without due regard to repayment ability, based upon consideration of the resident borrower or borrower's current and expected income, current obligations, employment status, and other financial resources, and without first receiving certification from a counselor approved by the United States Department of Housing and Urban Development of the New York State Banking Department that the borrower has received counseling on the advisability of the loan transaction; and

Whereas, The Bill also states that a lender could not pay a contractor under a home improvement contract from the proceeds of a high-cost home loan other than by an instrument payable to the borrower or jointly to the borrower and the contractor, or at the election of the borrower, through a third-party escrow agent in accordance with the terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement; and

Whereas, The Bill would also prevent a lender or mortgage broker from recommending or encouraging default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost home loan that refinances all or any portion of such existing loan or debt; and

Whereas, The Bill would also provide that in that making or arranging a high-cost home loan, no lender or mortgage broker shall accept or give any fee, kickback, thing of value, portion, split or percentage of charges, other than as payment for goods or facilities that were actually furnished or services that were actually performed, and such payment must be reasonably related to the value of the goods or facilities that were actually furnished or services that were actually performed; and

Whereas, The Bill's many provisions would clearly provide much needed protections against predatory lending practices that can financially devastate homeowners; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the Legislature and Governor of the State of New York to enact A7828A, amending the Banking, Real Property Actions and Proceedings, and General Business Laws in relation to eliminating rampant predatory lending practices.

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